

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MATTHEW T. SHAFER, SHERI  
HAUGABOOK, PETER HEIDT, JEFFREY  
SHOVER, MACE TAMSE, GEORGE  
LIVANOS, MARK LOFTUS, JEFFREY  
SAMSEN, JEFFREY SHERESKY, STEVE  
SHERESKY, STEVE NADLER, AND SANDY  
JUKEL, ON BEHALF OF THEMSELVES AND  
ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

vs.

MORGAN STANLEY, MORGAN STANLEY  
SMITH BARNEY LLC, MORGAN STANLEY  
COMPENSATION MANAGEMENT  
DEVELOPMENT AND SUCCESSION  
COMMITTEE, and John/Jane Does 1-20,

Defendants.

Civil Action No. 1:20-cv-11047-PGG

CLASS ACTION

**MOTION FOR LEAVE TO FILE PLAINTIFFS' NOTICE OF  
SUPPLEMENTAL AUTHORITY IN SUPPORT OF THEIR OPPOSITION  
TO DEFENDANTS' MOTION TO COMPEL ARBITRATION**

PLEASE TAKE NOTICE that Plaintiffs will respectfully move this Court before the Honorable Paul G. Gardephe, at the United States Courthouse, 40 Foley Square, Courtroom 705, New York, New York 10007, at such time as counsel may be heard, for leave to file the notice of supplemental authority attached as Exhibit A regarding Defendants' pending motion to compel arbitration (ECF No. 65).

Defendants initially moved to compel arbitration on March 24, 2021, with respect to the original Plaintiff, Matthew Shafer. (ECF Nos. 42-43, filed May 5, 2021.) Shafer responded on April 21, 2021. (ECF No. 70, filed May 5, 2021.) Defendants replied on May 5, 2021. (ECF No. 71, filed May 5, 2021.) On March 10, 2022, the Court granted Shafer's motion to join

additional plaintiffs. As a result, the Court denied Defendants' motion to compel arbitration without prejudice to renewal after the filing of an amended complaint. (ECF No. 57.)

Plaintiffs filed their amended complaint on March 24, 2022 (ECF No. 58). Defendants moved to compel Plaintiffs' claims on May 9, 2022 (ECF Nos. 65-68, filed June 29, 2022). Plaintiffs responded on June 8, 2022. (ECF No. 72, filed June 30, 2022.) Defendants replied on June 29, 2022. (ECF No. 69, filed June 29, 2022.)

On December 6, 2022, Judge Denise Cote of the Southern District of New York entered an opinion in *Lloyd v. Argent Trust Co.*, No. 22-cv-4129, 2022 U.S. Dist. LEXIS 219964, 2022 WL 17542071 (S.D.N.Y. Dec. 6, 2022). *See Exhibit 1 to Plaintiffs' Notice of Supplemental Authority in Support of Their Opposition to Defendants' Motion to Compel Arbitration.* This opinion involves several issues raised by Defendants' motion to compel arbitration in this case, including whether Plaintiffs' ERISA claims brought in a representative capacity can be individually arbitrated.

Defendants do not oppose this Motion,<sup>1</sup> so long as they are allowed to respond to the notice.

WHEREFORE, Plaintiffs respectfully request that the Court grant their *Motion for Leave to File Plaintiffs' Notice of Supplemental Authority in Support of Their Opposition to Defendants' Motion to Compel Arbitration.*

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<sup>1</sup> In accordance with Section IV.C of the Court's Individual Rules of Practice, Plaintiffs are therefore filing the Motion on ECF without awaiting a response.

Dated: December 20, 2022

Robert A. Izard (*pro hac vice*)  
Douglas P. Needham  
IZARD, KINDALL & RAABE LLP  
29 South Main Street, Suite 305  
West Hartford, CT 06107  
Tel: (860) 493-6292  
Fax: (860) 493-6290  
rizard@ikrlaw.com  
dneedham@ikrlaw.com

John S. "Jack" Edwards, Jr. (*pro hac vice*)  
Dona Szak (*pro hac vice*)  
AJAMIE LLP  
Pennzoil Place - South Tower  
711 Louisiana, Suite 2150  
Houston, TX 77002  
Telephone: (713) 860-1600  
Facsimile: (713) 860-1699  
jedwards@ajamie.com  
dszak@ajamie.com

Respectfully submitted,

/s/ Mathew P. Jasinski  
William H. Narwold  
Mathew P. Jasinski  
MOTLEY RICE LLC  
27 Church Street, 17th Floor  
Hartford, CT 06103  
Telephone: (860) 882-1681  
Facsimile: (860) 882-1682  
bnarwold@motleyrice.com  
mjasinski@motleyrice.com

*New York Office:*  
777 Third Avenue, 27th Floor  
New York, New York 10017

Thomas R. Ajamie  
AJAMIE LLP  
460 Park Avenue, 21st Floor  
New York, NY 10022  
Telephone: (713) 860-1600  
Facsimile: (713) 860-1699  
tajamie@ajamie.com

**CERTIFICATE OF SERVICE**

I hereby certify that on December 20, 2022, a copy of the foregoing *Motion for Leave to File Plaintiffs' Notice of Supplemental Authority in Support of Their Opposition to Defendants' Motion to Compel Arbitration* was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF system.

/s/ Mathew P. Jasinski  
Mathew P. Jasinski